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# Israeli Settlements and International Law

**Attempts to present Jewish settlement in West Bank territory (ancient Judea and Samaria) as illegal and "colonial" in nature ignores the complexity of this issue, the history of the land, and the unique legal circumstances of this case.**

**The Historical Context**

Jewish settlement in the territory of ancient Judea and Samaria (the West Bank) is often presented as merely a modern phenomenon. In fact, Jewish presence in this territory has existed for thousands of years and was recognized as legitimate in the Mandate for Palestine adopted by the League of Nations in 1922, which provided for the establishment of a Jewish state in the Jewish people's ancient homeland.

After recognizing "the historical connection of the Jewish people with Palestine" and "the grounds for reconstituting their national home", the Mandate specifically stipulated in Article 6 as follows:

"The Administration of Palestine, while ensuring that the rights and position of other sections of the population are not prejudiced, shall facilitate Jewish immigration under suitable conditions and shall encourage, in cooperation with the Jewish Agency referred to in Article 4, close settlement by Jews on the land, including State lands not required for public use".

Some Jewish settlements, such as in Hebron, existed throughout the centuries of Ottoman rule, while settlements such as Neve Ya'acov, north of Jerusalem, the Gush Etzion bloc in southern Judea, and the communities north of the Dead Sea, were established under British Mandatory administration prior to the establishment of the State of Israel, and in accordance with the League of Nations Mandate.

Many contemporary Israeli settlements have actually been re-established on sites which were home to Jewish communities in previous generations, in an

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expression of the Jewish people's deep historic and abiding connection with this land - the cradle of Jewish civilization and the locus of the key events of the Hebrew Bible. A significant number are located in places where previous Jewish communities were forcibly ousted by Arab armies or militia, or slaughtered, as was the case with the ancient Jewish community of Hebron in 1929.

For more than a thousand years, the only administration which has prohibited Jewish settlement in these areas was the Jordanian occupation administration, which during the nineteen years of its rule (1948-1967) declared the sale of land to Jews a capital offense. The right of Jews to establish homes in these areas, and the private legal titles to the land which had been acquired, could not be legally invalidated by Jordanian occupation - which resulted from their illegal armed invasion of Israel in 1948 and was never recognized internationally as legitimate - and such rights and titles remain valid to this day.

In short, the attempt to portray Jewish communities in the West Bank as a new form of "colonial" settlement in the land of a foreign sovereign is as disingenuous as it is politically motivated. At no point in history were Jerusalem and the West Bank subject to Palestinian Arab sovereignty. At issue is the right of Jews to reside in their ancient homeland, alongside Palestinian Arab communities, in an expression of the connection of both peoples to this land.

**International Humanitarian Law in the West Bank and Gaza Strip**

International Humanitarian Law (IHL) or the Laws of Armed Conflict (LOAC) prohibits the transfer of segments of the population of a state to the territory of another state which it has occupied as a result of the resort to armed force. This principle, which is reflected in Article 49(6) of the Fourth Geneva Convention (1949), was drafted immediately following the Second World War and as a response to specific events that occurred during that war.

As the International Red Cross' authoritative commentary to the Convention confirms, the principle was intended to protect the local population from displacement, including endangering its separate existence as a race, as occurred with respect to the forced population transfers in Czechoslovakia, Poland and Hungary before and during the war. Quite apart from the question of whether the Fourth Geneva Convention applies de jure to territory such as the West Bank over which there was no previous legitimate sovereign, the case of Jews voluntarily establishing homes and communities in their ancient homeland, and alongside Palestinian communities, does not match the kind of forced population transfers contemplated by Article 49(6).

As Professor Eugene Rostow, former US Under-Secretary of State for Political Affairs has written: "the Jewish right of settlement in the area is equivalent in

every way to the right of the local population to live there" (AJIL, 1990, vol. 84, p.72). The provisions of Article 49(6) regarding forced population transfer to occupied sovereign territory should not be seen as prohibiting the voluntary return of individuals to the towns and villages from which they, or their ancestors, had been forcibly ousted. Nor does it prohibit the movement of individuals to land which was not under the legitimate sovereignty of any state and which is not subject to private ownership.

In this regard, it should be noted that Israeli settlements in the West Bank have been established only after an exhaustive investigation process, under the supervision of the Supreme Court of Israel, and subject to appeal, which is designed to ensure that no communities are established illegally on private land.

Just as the settlements do not violate the terms of Article 49(6) of the Fourth Geneva Convention, they do not constitute a "grave breach" of the Fourth Geneva Convention or "war crimes", as some claim. In fact, even according to the view that these settlements are inconsistent with Article 49(6), the notion that such violations constitute a "grave breach" or a "war crime" was introduced (as a result of political pressure by Arab States) only in the 1977 Additional Protocols to the Geneva Conventions, to which leading States including Israel are not party and which, in this respect, does not reflect customary international law.

In legal terms, the West Bank is best regarded as territory over which there are competing claims which should be resolved in peace process negotiations - and indeed both the Israeli and Palestinian sides have committed to this principle. Israel has valid claims to title in this territory based not only on the historic Jewish connection to, and long-time residence in this land, its designation as part of the Jewish state under the League of Nations Mandate, and Israel's legally acknowledged right to secure boundaries, but also on the fact that the territory was not previously under the legitimate sovereignty of any state and came under Israeli control in a war of self-defense. At the same time, Israel recognizes that the Palestinians also entertain claims to this area. It is for this reason that the two sides have expressly agreed to resolve all outstanding issues, including the future of the settlements, in direct bilateral negotiations to which Israel remains committed.

**Israeli-Palestinian Agreements**

The bilateral agreements reached between Israel and the Palestinians, and which govern their relations, contain no prohibition on the building or expansion of settlements. On the contrary, it is specifically provided that the issue of settlements is reserved for permanent status negotiations, reflecting the understanding of both sides that this issue can only be resolved alongside other permanent status issues, such as borders and security. Indeed, the parties expressly agreed - in the Israeli-Palestinian Interim Agreement of 1995

- that the Palestinian Authority has no jurisdiction or control over settlements or Israelis and that the settlements are subject to exclusive Israeli jurisdiction pending the conclusion of a permanent status agreement.

It has been charged that the prohibition, contained in the Interim Agreement (Article 31(7), against unilateral steps which alter the "status" of the West Bank and Gaza Strip implies a ban on settlement activity. This position is unfounded. This prohibition was agreed upon in order to prevent either side from taking steps which purport to change the legal status of this territory (such as by annexation or unilateral declaration of statehood), pending the outcome of permanent status negotiations. Were this prohibition to be applied to building - and given that the provision is drafted to apply equally to both sides - it would lead to the dubious interpretation that neither side is permitted to build homes to accommodate for the needs of their respective communities until permanent status negotiations are successfully concluded.

In this regard, Israel's decision to dismantle all settlements from the Gaza Strip and some in the Northern West Bank in the context of the 2005 Disengagement Plan were unilateral Israeli measures rather than the fulfilment of a legal obligation.

**Conclusions**

- Attempts to present Jewish settlement in ancient Judea and Samaria (the West Bank) as illegal and "colonial" in nature ignores the complexity of this issue, the history of the land, and the unique legal circumstances of this case.
- Jewish communities in this territory have existed from time immemorial and express the deep connection of the Jewish people to land which is the cradle of their civilization, as affirmed by the League of Nations Mandate for Palestine, and from which they, or their ancestors, were ousted.
- The prohibition against the forcible transfer of civilians to territory of an occupied state under the Fourth Geneva Convention was not intended to relate to the circumstances of voluntary Jewish settlement in the West Bank on legitimately acquired land which did not belong to a previous lawful sovereign and which was designated as part of the Jewish State under the League of Nations Mandate.
- Bilateral Israeli-Palestinian Agreements specifically affirm that settlements are subject to agreed and exclusive Israeli jurisdiction pending the outcome of peace negotiations, and do not prohibit settlement activity.
- Israel remains committed to peace negotiations without preconditions in order to resolve all outstanding issues and competing claims. It continues to ask the Palestinian side to respond in kind. It is hoped that such negotiations will produce an agreed secure and peaceful settlement which will give legitimate expression to the connection of both Jews and Palestinians to this ancient land.

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